Public Prosecutor v Wong Sing Nang

SESSIONS COURT (MIRI) — CRIMINAL CASE NO 62-27-95
SUPANG LIAN J
26 APRIL 1996

Criminal Law *— Election Offences Act 1954 (Malaysia) — s 9(1) — Refraining voter from casting vote — Whether complainants were registered voters at the relevant polling station — Whether accused was in the vicinity of the polling station while polling was in progress — Whether the accused's act of taking away the NRICs of the complainants amounted to refraining them from voting*

Election *— Conduct of elections — Mode of determining whether a person is entitled to vote — Whether a voter can cast his vote without an NRIC — Elections (Conduct of Elections) Regulations 1981 regs 14 & 20*

The accused was charged with three offences under s 9(1) of the Election Offences Act 1954 ('the Act'). In the first charge the accused was alleged to have seized the NRIC of one Terry ak Kilat ('PW3') who was a registered voter of the polling station at Sekolah Rendah Kebangsaan Nanga Assan ('SRK Nanga Assan') thereby restraining him from giving his vote. In the second charge the accused was alleged to have seized the NRIC of one Dyg Rapieah bte Awang Hassan ('PW4') who was also a registered voter of the polling station at SRK Nanga Assan thereby restraining her from giving her vote. In the third charge, the accused was alleged to have seized the NRIC of one Genick bin Likau ('PW5'), another registered voter of the same polling station at SRK Nanga Assan, thereby restraining him from giving his vote. The offences were alleged to have been committed on 25 April 1995 at about 1pm at the vicinity of the polling station at SRK Nanga Assan. The issues to be decided by the court were: (i) whether PW3, PW4 and PW5 were registered voters; (ii) whether the accused had been in the vicinity of the polling station while polling was in progress to seize and detain the NRICs of PW3, PW4 and PW5; and (iii) whether consequently the accused had restrained them in order to refrain them from voting.

Held, acquitting the accused:

(1) The evidence on each charge has to be considered separately. Further before a prima facie case can be said to be established, the duty of the court is to carry out a maximum evaluation of the evidence to determine whether or not the prosecution has established each essential ingredient of the offence beyond reasonable doubt (see p 305E–F); *Tan Boon Kean v PP* [1995] 3 MLJ 514 followed.

(2) Pursuant to reg 14 of the Elections (Conduct of Elections) Regulations 1981, the electoral roll shall provide prima facie evidence for determining whether or not a person is entitled to vote at an election in any constituency. As the names of PW3, PW4 and PW5 appeared in the master roll, they must be regarded as registered voters and as

such, under reg 5 of the Elections (Registration of Electors) Regulations (Sarawak) 1971, they were entitled to vote (see p 307B–C). A

(3) From the evidence of the various prosecution witnesses, the prosecution had presented two conflicting versions of when the accused arrived at and left the polling station. Since the evidence led by the prosecution was not free from reasonable doubt, the prosecution could not be said to have established beyond reasonable doubt an essential ingredient of the offence that the accused was in the vicinity of the polling station at SRK Nanga Assan at about 1pm on 25 April 1995. In all probability the accused had arrived there at 2pm. As such, even if the accused had collected the NRICs of PW3, PW4 and PW5, it could not be said that he had restrained them in order to refrain them from voting since polling closed at 2pm that day (see pp 314D–315A). B C

(4) In the event that the finding of fact that the accused arrived at the polling station at 2pm was wrong, the accused still could not be said to have refrained PW3, PW4 and PW5 from voting by having taken away their NRICs because a voter could cast his vote without an identity card. This was in view of the fact that the discretion to allow a voter to vote was with the presiding officer of the respective polling stations. If there was any restraining, it was by the longhouse folks who took strong objection to PW3, PW4 and PW5 casting their votes at SRK Nanga Assan. In the absence of any evidence that the accused had initiated the actions of the longhouse folks, the accused could not be said to have restrained the complainants in order to refrain them from voting (see pp 315B–316B); *Tg Nawawi bin Tengku Ab Kadir lwn Lokman bin Muda & Lain-lain Lagi* [1996] 1 CLJ 551 followed. D E F

[Bahasa Malaysia summary

Tertuduh telah dituduh dengan tiga kesalahan di bawah s 9(1) Akta Kesalahan Pilihanraya 1954 ('Akta tersebut'). Dalam pertuduhan pertama, tertuduh didakwa merampas kad pengenalan seorang yang bernama Terry ak Kilat ('PW3') yang merupakan pengundi yang didaftarkan dengan stesyen mengundi di Sekolah Rendah Kebangsaan Nanga Assan ('SRK Nanga Assan') dan dengan itu telah menghalangnya daripada membuang undi. Dalam pertuduhan kedua, tertuduh didakwa merampas kad pengenalan seorang yang bernama Dyg Rapieah bte Awang Hassan ('PW4') yang juga merupakan pengundi yang didaftarkan dengan stesyen mengundi di SRK Nanga Assan dan dengan itu telah menghalangnya daripada membuang undi. Dalam pertuduhan ketiga, tertuduh didakwa merampas kad pengenalan seorang yang bernama Genick bin Likau ('PW5') yang merupakan pengundi yang didaftarkan dengan stesyen mengundi di SRK Nanga Assan dan dengan itu telah menghalangnya daripada membuang undi. Kesalahan itu dikatakan telah dilakukan pada 25 April 1995 kira-kira pada 1 tengah hari di persekitaran stesyen mengundi di SRK Nanga Assan. Isu-isu yang perlu diputuskan G H I

oleh mahkamah adalah: (i) sama ada PW3, PW4 dan PW5 adalah pengundi berdaftar; (ii) sama ada tertuduh berada di persekitaran stesyen mengundi semasa pengundian dijalankan untuk merampas dan menahan kad-kad pengenalan PW3, PW4 dan PW5; dan (iii) sama ada akibatnya tertuduh telah menghalang mereka daripada mengundi.

Diputuskan, membebaskan tertuduh:

(1) Keterangan berkenaan setiap pertuduhan hendaklah dipertimbangkan secara berasingan. Tambahan pula, sebelum kes prima facie boleh didirikan, adalah menjadi tugas mahkamah untuk menjalankan penilaian keterangan secara maksimum untuk memastikan sama ada pihak pendakwa telah membuktikan setiap unsur penting kesalahan tersebut melampaui keraguan yang munasabah (lihat ms 305E–F); *Tan Boon Kean v PP* [1995] 3 MLJ 514 diikut.

(2) Menurut peraturan 14 Peraturan-Peraturan Pilihanraya (Penjalanan Pilihanraya) 1981, daftar pengundi merupakan keterangan prima facie untuk menentukan sama ada seseorang itu berhak untuk mengundi di mana-mana kawasan pilihanraya. Oleh kerana nama-nama PW3, PW4 dan PW5 terdapat di dalam daftar pengundi, maka mereka patut dianggap sebagai pengundi-pengundi berdaftar dan menurut peraturan 5 Peraturan-Peraturan Pilihanraya (Pendaftaran Pengundi-Pengundi) (Sarawak) 1971, mereka berhak mengundi (lihat ms 307B–C).

(3) Berdasarkan keterangan saksi-saksi pihak pendakwa, pihak pendakwa telah mengemukakan dua versi yang bercanggah berkaitan dengan masa tertuduh telah sampai dan meninggalkan stesyen mengundi itu. Memandangkan bahawa keterangan yang dikemukakan oleh pihak pendakwa adalah tidak bebas daripada keraguan yang munasabah, maka pihak pendakwa tidak boleh dikatakan telah membuktikan melampaui keraguan yang munasabah satu unsur yang penting kesalahan tersebut iaitu bahawa tertuduh berada dalam persekitaran stesyen mengundi di SRK Nanga Assan kira-kira pada pukul 1 tengahari pada 25 April 1995. Mungkin sekali, tertuduh telah sampai di sana pada pukul 2 petang. Dengan itu, biarpun tertuduh telah mengambil kad pengenalan PW3, PW4 dan PW5, ianya tidak boleh dikatakan bahawa beliau telah menyekat mereka dengan tujuan menghalang mereka daripada membuang undi kerana pembuangan undi telah tamat pada pukul 2 petang pada hari itu (lihat ms 314D–315A).

(4) Andainya penemuan fakta bahawa tertuduh telah tiba di stesyen mengundi pada pukul 2 petang adalah salah, tertuduh masih tidak boleh dikatakan telah menghalang PW3, PW4 dan PW5 daripada mengundi dengan mengambil kad-kad pengenalan mereka kerana seseorang pengundi boleh mengundi tanpa kad untuk membenarkan seorang pengundi untuk mengundi terletak pada pegawai berkuasa di setiap stesyen mengundi. Sekiranya terdapat apa-apa halangan, ianya adalah daripada penduduk rumah panjang yang telah membantah terhadap PW3, PW4 dan PW5 membuang undi di

SRK Nanga Assan. Memandangkan tiada keterangan yang menunjukkan bahawa tertuduh telah memulakan tindakan penduduk rumah panjang itu, maka tertuduh tidak boleh dikatakan telah menyekat pengadu-pengadu supaya menghalang mereka daripada membuang undi (lihat ms 315B–316B); *Tg Nawawi bin Tengku Ab Kadir lwn Lokman bin Muda & Lain-Lain Lagi* [1996] 1 CLJ 551 diikut.]

Notes

For cases on election offences, see 4 *Mallal's Digest* (4th Ed) paras 214–216.

For cases on impeachment proceedings, see 7 *Mallal's Digest* (4th Ed 1995 Reissue) paras 1102–1112.

Cases referred to

Dato' Mokhtar Hashim v PP [1983] 2 MLJ 232
Muthusamy v PP [1948] MLJ 57
Tan Boon Kean v PP [1995] 3 MLJ 514
Tg Nawawi bin Tengku Ab Kadir lwn Lokman bin Muda & Lain-lain Lagi [1996] 1 CLJ 551
Wong Phin Chung v The Election Commission & Ors Election Petition No K1 of 1994 (High Court, Kota Kinabalu) (unreported)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 112, 180
Election Offences Act 1954 ss 3, 9(1)
Elections (Conduct of Elections) Regulations 1981 reg 14
Elections (Registration of Electors) Regulations (Sarawak) 1971 reg 5
Evidence Act 1950 s 155
Federal Constitution art 119

Mohd Zulkarnian bin Hussein (Deputy Public Prosecutor) for the public prosecutor.

Orlando Chua (*Wong, Orlando Chua & Advocates*) and *Wong Ho Leng* (*Wong Ho Leng & Advocates*) for the accused.

Cur Adv Vult

Supang Lian J:

Ruling

Preliminary

The accused stands charged with three offences under s 9(1) of the Election Offences Act 1954 ('the Act') and punishable under s 11(1)(b) of the same Act. The first charge alleges that the accused had directly by himself restrained one Terry ak Kilat with NRIC KO305829 from giving his vote at an election. The accused is alleged to have seized the NRIC of the said Terry ak Kilat who was a registered voter of the polling station at Sekolah Rendah

A Kerajaan Nanga Assan ('SRK Nanga Assan'), Sibu and the said Terry ak Kilat was thereby refrained from giving his vote.

The second charge alleges that the accused had directly by himself restrained another person called Dyg Rapieah bte Awg Hassan with NRIC KO142501 from giving her vote at an election. The accused is also alleged to
B have seized the NRIC of the said Dyg Rapieah bte Awang Hassan who was a registered voter of the polling station at SRK Nanga Assan, Sibu and the said Dyg Rapieah bte Awg Hassan was thereby refrained from giving her vote.

The third charge alleges that the accused had directly by himself restrained yet one other person, namely Genick bin Likau NRIC KO262743 from giving his vote at an election. The accused is also alleged to have seized the NRIC of
C the said Genick bin Likau who was a registered voter of the same polling station at SRK Nanga Assan, Sibu and the said Genick bin Likau was thereby refrained from giving his vote.

The accused is alleged to have committed the three offences with which he is charged on 25 April 1995 at about 1pm at the vicinity of the polling
D station at SRK Nanga Assan, Sibu, Sarawak which was in P183 Lanang Constituency at the Parliamentary General Election in 1995.

General matters

At the close of the case for the prosecution, what has to be considered is
E whether the prosecution has made out a case against the accused on all three charges which, if unrebutted, would warrant his conviction. To this end I have reminded myself of two matters. Firstly, I have in mind that the evidence on each charge must be considered separately. Secondly, the recent decision of the Federal Court in the case of *Tan Boon Kean v PP* [1995] 3 MLJ 514 lays down that the nature of the case required to be proved under s 180 of the
F Criminal Procedure Code (FMS Cap 6) ('the CPC') (in pari materia with s 173(f)) is a 'prima facie case'. It was held further that before a prima facie case can be said to be established, the duty of the court is to carry out a maximum evaluation of the evidence to determine whether or not the prosecution has established each essential ingredient of the offence beyond reasonable doubt.

G EVALUATION OF THE EVIDENCE

That PW3, PW4 and PW5 were registered voters

With regard the first element of the three charges preferred, it is necessary to consider the evidence of PW12.

H PW12 is the state election officer who is also the deputy chief registration officer for Sarawak. He testified that according to the electoral master roll certified on 9 February 1995 and marked exh P21, the names of Terry ak Kilat (PW3), Dayang Rapieh bte Awg Hassan (PW4) and Genick bin Likau (PW5) appear in exh P21. Their names are listed in the polling district
I 183/37/01 Assan in the locality of 1833701001 Nanga Assan, Rumah Sipok. Before their names appeared in exh P21, the Election Commission conducted a revision of the electoral roll in 1994. The qualifying date of registration of voters was fixed for 10 July 1994. The revision of the roll commenced on 11 July 1994 and ended on 31 July 1994. During the exercise, voters who were eligible applied for registration throughout the

state of Sarawak using Borang A. After the expiry of the period, those who were qualified as new voters or wished to change their addresses were accepted probationally. Their names were then put on List B which was the draft roll. The draft roll with the names of PW3, PW4 and PW5 was produced and marked exh P20. Exhibit P20 was displayed to the public during the claim and objection period which was fixed from 12 October 1994 to 25 October 1994. Exhibit P20 was displayed at the Sibu Municipal Council. During this period all eligible voters in P183 Lanang constituency had the right to make objections if they found any voter's name on exh P20 who was not qualified. In the case of PW3, PW4 and PW5 there were no objections from any voter in the Lanang constituency. As a result, the registration officer certified the roll under Borang G. The roll was certified on 9 February 1995 by the Election Commission. PW12 testified that with their names appearing on the roll, pursuant to reg 14 of the Elections (Conduct of Elections) Regulations 1981, PW3, PW4 and PW5 were entitled to vote in P183 Lanang constituency at the Ninth Parliamentary Election for Sarawak as the electoral roll was prima facie evidence they were entitled to vote.

According to PW12, PW3, PW4 and PW5 were scheduled to vote at the polling station at SRK Nanga Assan. The polling schedule for P183 Lanang constituency marked exh P22 shows that polling at SRK Nanga Assan was scheduled on the second day of election, that is to say, on 25 April 1995 from 7.30am to 2pm.

Under cross-examination, PW12 explained that pursuant to art 119 of the Federal Constitution, a person must be resident in a constituency before he can be registered as a voter there. He clarified that the SRK Nanga Assan is part of the locality in P183 Lanang constituency under the polling district of Assan. He said that the names of PW3, PW4 and PW5 first appeared on List B and that they were new voters, ie they had never registered before. In order to register they must complete Form A and declare positively they were resident in the constituency at the qualifying date of 10 July 1994. According to exhs D1, D2 and D3 which are Forms A completed by PW4, PW3 and PW5 respectively, all three declared residency at Nanga Assan, Rumah Sipok on the qualifying date. If either PW3, PW4 or PW5 stated in court that she/he had never been a resident of Nanga Assan, then she/he would have given a false declaration in Form A which is an offence under s 3 of the Act. PW12 stated that according to the electoral roll marked exh D4, the locality at Ensurai falls within the parliamentary constituency of P184 Sibu. He said that the residents of Ensurai would have been more properly registered in P184 Sibu.

PW12 testified as well that a voter can vote without an identity card. Supposing a voter's identity card is taken away from him, he can still cast his vote. As for the red cards marked exhs P2 to P4 and exhs P6 to P15, these were not issued by the Election Commission and had no legal status. He said that a voter can cast his vote without his identity card and without the red card.

With regard the first ingredient, I do not think it can be seriously disputed that PW3, PW4 and PW5 were registered voters of P183 Lanang

A constituency under the polling district of Assan. The testimony of PW12 on this matter was clear and largely undisputed.

PW12's evidence establishes that the names of PW3, PW4 and PW5 appeared on the electoral master roll for the Ninth Parliamentary Election in Sarawak. It was also established from his evidence that PW3, PW4 and
B PW5 were scheduled to vote at the polling station at SRK Nanga Assan. Pursuant to reg 14 of the Elections (Conduct of Elections) Regulations 1981, the electoral roll shall provide prima facie evidence for determining whether or not a person is entitled to vote at an election in any constituency. As the names of PW3, PW4 and PW5 appeared on the master roll marked exh P21, they must be regarded as registered voters and as such under reg
C 5 of the Elections (Registration or Electors) Regulations (Sarawak) 1971, they were entitled to vote. That being the case it would have been perfectly proper for them to have wanted to vote (see generally the judgment of Steve Shim J in *Wong Phin Chung v The Election Commission & Ors* Election Petition No KI of 1994 High Court, Kota Kinabalu at p 15). To
D my mind the prosecution had proven the first ingredient of the three charges beyond reasonsable doubt.

That the accused had seized and detained the NRICs of PW3, PW4 and PW5, thereby directly restraining them in order to refrain them from voting

I thought that ingredients two and three are best dealt with together. The
E evidence of the complainants of the three charges should be a good start for consideration.

The complainant of the first charge is Terry ak Kilat. He is 24 years old and is employed as a driver by Rimbunan Hijau at its Plywood factory in Tanjong Ensurai, Sibu. He is PW3. On 25 April 1995, Terry ak Kilat
F was employed in the same capacity with the same employer at the same place.

PW3 described how on 25 April 1995 at 7.30am his employer had given him a red card marked exh P2. Exhibit P2 was to enable him to vote that day at his polling station at SRK Nanga Assan. He left for SRK Nanga
G Assan at about 7.30am by express boat with 12 others. Dayang and Genick were in the group. PW3 said that he had himself registered as a voter at the Sibu Municipal Council on 9 March 1995.

PW3 and his group reached the polling station at 8.30am. They all checked whether their names were listed. When PW3 discovered his name was listed he and the others in his group stood in the line to cast their
H votes. While they were still in the queue a group of longhouse folks asked them not to vote there and asked them to go back. The said longhouse folks put them in two long boats and sent them to the old Lanang wharf. From the old Lanang wharf they went to the Rimbunan Hijau Office in Sibu town. It was about 9.30am by then. When they arrived at the
I Rimbunan Hijau Office, someone there sent them back in three vehicles to SRK Nanga Assan.

They got back to SRK Nanga Assan, rechecked their names on the list and found their names were still there. The same longhouse people told them not to cast their votes there, otherwise something bad would

happen to them. They went and sat at the compound of a teacher's quarters and waited. They could not leave because the said longhouse people threatened to assault them. They waited until 2pm. The longhouse folks had also told them not to run away but to wait for 'the boss' to come. The so-called boss whom PW3 identified as the accused arrived at almost 2pm. The accused went straight to PW3 and his group and introduced himself. He asked for their NRICs and red cards which they all gave to him. After that PW3 and his group were taken as pillion riders on motor cycles to the Lanang ferry point. The accused followed suit on another motor cycle. At the ferry point they were taken into a van and driven to a school. The accused followed in a car. At the school PW3 and his group were paraded before the public on the instructions of the accused. They were brought to two more schools where they were similarly treated. It was about 4.30pm by the time they were at the third school. After the third school PW3 and his group were brought to the police station by the accused arriving at about 5.30pm. The accused returned their NRICs at the police station but not the red cards. PW3 and his group were unable to cast their votes that day.

Under cross-examination PW3 said that he was originally from Kawit, Saratok and was never a resident of Nanga Assan. At the time of registration as a voter he was staying at quarters provided by his employer at Tg Ensurai. Food and lodging were provided by his employer. PW3 maintained that he registered as a voter on 9 March 1995. When the group of longhouse folks first approached him they were angry, but he did not know why. He denied that the group told him he was not supposed to vote there because he was not from the area. He was frightened of the group as they might assault him and his group. This group of people ordered him and his friends to go to the compound of the quarters. PW3 maintained that they had waited until 2pm before the defendant arrived. The accused did not interview them but had called out their names one by one and took their NRICs and red cards. He denied that when the accused arrived he tried to calm the kampong folks who were getting agitated. PW3 stated that the NRICs and red cards were handed to the accused after polling time had closed. He agreed that the accused merely asked him and his group to line up so that the police could bring them to the police station. He agreed too that he and his group were prevented from casting their votes that day by the kampong folks.

In re-examination PW3 seemed unable to make up his mind whether they were asked to line up so that the accused could send them to the police station. However, he agreed that as soon as they had lined up they were taken to the three schools and not to the police station.

Dayang Rapieah bte Awg Hassan who is PW4 is the complainant of the second charge. She is 34 years old and works as a labourer at Forest Wood, Rimbunan Hijau, Tg Ensurai, Sibu. She described how on the morning of 25 April 1995, she was given a red card marked exh P3 by her employer to enable her to vote that day. She left at about 7.30am with 12 others including Terry and Genick. They reached the polling station at SRK Nanga Assan at about 9am. She was a registered voter and had registered in 1994. She and her 12 friends checked their names on the list.

When she found her name was on the list she was asked to cast her vote. When she and her friends were about to do that, a group of seven to eight people with badges on their shirts stopped them. The badges had the rocket symbol on them. The group of seven to eight told them they could not vote there and asked them to go home. PW4 and her group were put in two long boats and were sent to Sibu town. They then proceeded to the Rimbunan Hijau Office in town. The people in the office in turn sent them back to SRK Nanga Assan reaching the school at about 12pm. At the school PW4 and her group again checked their names on the list and found that their names were still there. PW4 wanted to cast her vote, but the same group of seven to eight people stopped them. This time that group of people were joined by some others. PW4 and her group were surrounded by these poeple and they all waited for the boss to come. The boss whom PW4 identified as the accused came at about 1pm. The accused introduced himself and took their NRICs and red cards.

After their NRICs and red cards were taken from them, PW4 and her 12 friends were sent on motor cycles to the Ulu Lanang ferry point. From there they were taken to three different schools where they were paraded before the public . The accused was present at all three schools, but PW4 did not know what he was doing there. She said the group of people who stopped her from voting at SRK Nanga Assan were the ones who asked them to line up. PW4 said they reached the first school at 5pm. After the third school, they were taken to the police station arriving there at about 6pm. The accused returned her NRIC but not the red card, at the police station. PW4 said that she was unable to cast her vote that day.

Under cross-examination PW4 said she was originally from Rejang and was never a resident of Nanga Assan. She said that from the time of arrival at the SRK Nanga Assan for the second time until she got to the police station her group inclusive of Terry had never split up. She said some of the villagers did tell her that she was not supposed to vote at SRK Nanga Assan because she was not from there. They waited ten to 20 minutes at the ferry point. It took them 30 minutes to get to the first school. They had waited 15 minutes after the defendant arrived at SRK Nanga Assan. It took them ten minutes to get to the school from the ferry point.

PW5, the complainant of the third charge, is Genick bin Likau who is 30 years old and employed at Rimbunan Hijau, Tg Ensurai, Sibu. He described how he had also on 25 April 1995 received a red card (exh P4) at about 7am and had gone to SRK Nanga Assan to cast his vote. He is a registered voter and his polling station was SRK Nanga Assan. That morning he went to the polling station by express boat along with 12 others including Dayang and Terry. Upon reaching the polling station they checked their names and PW5 found his name on the list. They stood in the queue to cast their votes. While they waited, two persons approached their group. These persons had the rocket symbol on their shirts and they asked PW5 and his friends to go back. PW5 and his friends were scared as Nanga Assan was not the place where they came from and so they left by two longboats. They got to the old Lanang wharf and eventually arrived at

what he called the office in Sibu town at about 10am. The people from the office sent them back to SRK Nanga Assan.

Upon their arrival at SRK Nanga Assan for the second time, they again checked their names and PW5 found that his name was on the list. When they stood in the queue in order to vote the same persons approached them again. This time they were joined by many others. This group of people asked them to wait at one of the teacher's quarters and to stay put there. They were not to move around but to wait for the boss. That was about 1pm then. The so called boss whom PW5 identified as the accused arrived. The accused introduced himself and collected their NRICs and red cards. After he took their NRICs and red cards they still sat under the house and waited until 2pm ie until polling time was up. When the accused asked for their NRICs and red cards he did not say anything else.

After the accused had obtained the NRICs and red cards, PW5 and his group were put on motor cycles and taken to the Lanang ferry. From the Lanang ferry they were taken to three schools where they were shown to the public. The accused was at the schools. He later brought them to the Central Police Station, Sibu.

PW5 said that in the end he was not able to cast his vote that day because he was stopped by people and was asked to go back.

Under cross-examination PW5 said he was originally from Mukah and was never a resident of Nanga Assan. He had been working at Tg Ensurai for six years now and lodging is provided. He said that it was the people in the office who had registered his name as a voter. At Nanga Assan on the first occasion, the two people who approached him were angry and they told him he was not supposed to vote there because he was not a resident. On the second occasion the group of people who had confronted them were angry as well. He said he was with Dayang and Terry and the rest of the group when he waited at the teacher's quarters. PW5 stated that he would agree with Terry (PW3) if the latter had said that the accused had arrived at the teacher's quarters past 2pm.

PW6 was William Ekie ak Maing. He was a polling agent of the DAP and was at SRK Nanga Assan on 25 April 1995 to supervise voting. In his testimony PW6 said that on 25 April 1995 the accused had come to the polling station at SRK Nanga Assan but by that time the polling station had closed. He said that the accused came past 2pm. When the accused came he had only dropped by and did not do anything. At this juncture learned deputy public prosecutor requested that PW6 refresh his memory with a statement he had given to the police on 26 April 1996. After the relevant passage which was underlined was shown to PW6, the latter denied that the underlined passage was his statement. The result was that the deputy public prosecutor initiated impeachment proceedings against his own witness under s 155 of the Evidence Act 1950. Pursuant to the procedure for impeachment as set out in *Muthusamy v PP* [1948] MLJ 57, I had a look at the underlined passage. I found there were material contradictions between the underlined passage and the oral testimony of PW6. When asked again whether he made the statements as underlined, PW6 said the contents were correct except for the time stated.

PW7 and PW8 were called to prove the statement made by PW6 and marked exh P5. PW8 testified that he recorded the statement from PW6. He said that one L/Cpl Jerom ak Genit acted as the Iban interpreter. PW7 said that the provisions of s 112 of the CPC were read and interpreted to and understood by PW6. The statement was then recorded in the narrative with questions and answers towards the end. The contents at the statement were read back and interpreted to PW6. The latter affirmed the statement and was given the opportunity to make amendments or additions. PW6 declined to do so. He then signed the statement on every page.

PW8, L/Cpl Jerom Genit, confirmed that he acted as the interpreter during the recording of exh P5 by PW7 from PW6. He said the provisions of s 112 of the CPC were explained, interpreted to and understood by PW6. According to him the statement was indeed read back and translated to PW6. The latter admitted the statement as the truth and was given the opportunity to verify and make corrections.

PW7 and PW8 gave evidence in a straightforward manner which is highly indicative they had no axe to grind. There appeared to be no reason at all why PW7 would want to embellish or alter PW6's statement. I therefore found that the passage underlined in exh P5 was the statement of PW6.

The two conflicting versions were explained to PW6. In his sworn evidence in court given on 27 March 1996, PW6 stated that the accused came to the SRK Nanga Assan past 2pm after the polling station had closed. In his statement (exh P5) to the police he stated that the accused arrived at 12.20pm. In his sworn evidence PW6 testified that the accused had only dropped by and did not do anything whereas in exh P5, PW6 said that the accused had asked for and obtained the NRICs of the 13 people. Furthermore the accused had told the 13 people that they could not vote at SRK Nanga Assan.

When asked to explain the material contradictions, PW6 merely said that only the time of 12.20pm was not correct. In other words he now accepted that the statements in the passage underlined were his except for the time stated therein. As for his sworn testimony that the accused did not do anything, PW6 explained that what he meant to say was that the accused did not threaten or assault anyone.

It was said before that no immediate order of a summary nature can be made when the credit of a witness is sought to be impugned and the right of cross-examination or re-examination according to the circumstances should not be denied. His credit stands to be assessed as a whole with the rest of the evidence at the appropriate stage; see *Dato' Mokhtar Hashim v PP* [1983] 2 MLJ 232.

Having heard the whole of the evidence adduced by the prosecution and having heard the submissions from the prosecution and defence, I find I could not accept the explanation of PW6 with regard the conflicting versions. The matters he was questioned on were simple matters about the time the accused had arrived at the SRK Nanga Assan and about what the accused did there. I was satisfied after hearing the testimonies of PW7 and PW8 that the contents of exh P5 were read and translated back to PW6

and that he admitted the contents to be correct and did not make any correction, alteration or addition. Therefore PW6's explanation that the time stated in exh P5 is not correct was no explanation at all. On his explanation as to why he said in court that the accused did not do anything at SRK Nanga Assan, the fact that PW6 admitted that the accused did collect the NRICs, was significant. Surely this could not have escaped the recollection of PW6 when asked what the accused did at SRK Nanga Assan that day. Like I said, it was a simple question requiring a straight forward and simple answer yet PW6 chose to say that the accused merely dropped by. I had carefully observed PW6 in the witness box and had observed his demeanour. I found him to be evasive. When asked whether he knew the defendant in this case he had replied no. But when asked whether he knew the person in the dock, he said he knew him. When first asked whether the statements in the underlined passage in exh P5 were his, he said they were not his. But when impeachment proceedings were started and the underlined statements were read and explained to him again, he admitted that the contents were his except for the time of 12.20pm. The two conflicting stands he took more than suggest that PW6 had not been a truthful witness. I consider PW6 unworthy of belief and I rule that his credit is impeached. His evidence is to be wholly disregarded.

Now, PW12 gave undisputed evidence that polling on 25 April 1995 at SRK Nanga Assan was scheduled from 7.30am to 2pm. The polling schedule marked exh P22 and tendered through PW12 shows this. That being the case it is incumbent upon the prosecution to establish that the accused had restrained PW3, PW4 and PW5 from voting between 7.30am and 2pm that day. It is alleged in the three charges that the accused committed the offences at about 1pm. The prosecution therefore must prove that the accused was at the vicinity of the polling station at SRK Nanga Assan at about 1pm when polling was in progess.

The best persons who could testify to this fact would be PW3, PW4 and PW5 themselves who were the persons allegedly restrained. However, as can be seen from their evidence set out above, although they agreed that accused had come to SRK Nanga Assan, they did not agree on the time of arrival. PW3 said they waited at the teacher's quarters until 2pm and the accused arrived at almost 2pm. PW5 on the other hand stated in examination-in-chief that the accused arrived at about 1pm. However during cross-examination he changed his story and said that he would agree with PW3 that the accused had arrived past 2pm. PW4 said that the accused arrived at about 1pm but PW4's own subsequent testimony raises doubt on this observation of the time of arrival of the accused. She testified that she and her group arrived at the first school (after SRK Nanga Assan) at 5pm. They eventually got to the police station at 6pm. Under cross-examination she stated that they waited 15 minutes after the accused had arrived; they took ten minutes to get to the ferry point from SRK Nanga Assan; they waited ten to 20 minutes at the ferry point and it took them 30 minutes to get to the first school from the ferry point. Going by her account, it was not possible that she and her group had arrived at the first school as late as 5pm. To take the matter further, on looking back, the accused was at the SRK Nanga Assan at the earliest by 3.30pm. Another matter of significance is that PW17, the Investigating Officer of this case,

testified that he saw the accused at the Central Police Station, Sibu at 5.05pm on 25 April 1995. In this, PW17 is supported by PW11 who testified he saw the accused at the Central Police Station, Sibu that day at 5pm. The testimonies of PW17 and PW11 on the time that they saw the accused at the Central Police Station, Sibu was neither challenged nor disputed. If PW11 and PW17 had seen the accused at the Central Police Station at 5pm, it is doubtful that PW4 and her group were brought to the Central Police Station at 6pm as stated by PW4.

Having considered the evidence of PW4, my impression of her as a witness is that she is not good at telling the time. In the circumstances, I find I cannot put too much reliance on her testimony that the accused had arrived at the polling station at about 1pm.

There was some other prosecution evidence to suggest that the accused was at SRK Nanga Assan at 1pm. PW9, Cpl Padzil bin Paimin was on duty at the SRK Nanga Assan polling station on 25 April 1995. He described how at 12.30pm that day he had seen PW6 stop someone from voting. PW9 advised him not to stop any one from voting. After that another commotion started and PW9 informed ASP Sapri, who was PW10. PW10 testified that he received two calls from PW9, one at 1.30pm and the other at 1.35pm. According to PW10, PW9 had informed him that some voters were prevented from voting. Now, if PW9 had telephoned PW10 when the second commotion started, going by the evidence of PW10, that commotion happened at about 1.30pm. Yet, curiously, PW9 gave evidence that the accused had arrived at the station at 1pm. According to him nothing happened when the accused arrived and that he did not see the accused take anything from anybody. He testified as well that the accused left SRK Nanga Assan at about 1pm. Going by PW9's evidence, the accused had left the polling station almost immediately after arrival. PW9 admitted in cross-examination that there was nothing that would have caused him to pay particular attention to the time of arrival of the accused. PW9's evidence in fact created doubt in the prosecution's case as he said that nothing happened when accused arrived and that PW9 did not see the accused take anything.

Another prosecution witness who had seen the accused at the SRK Nanga Assan polling station on 25 April 1995 was PW16, a former ASP. He testified that he went to the polling station with a team of light strike force after having been informed by PW10 that the KPD Sibu had directed him to do so. PW10 told him that 13 voters were prevented from voting by the local residents. PW10 spoke to him at 1.50pm. PW16 reached the polling station at 2.35pm. He met, among others, PW9 at the polling station. The latter told him that the accused had arrived at 1.30pm. Now, it does seem rather odd that PW9 had told PW16 that the accused arrived at the polling station at 1.30pm considering that PW9 himself had testified in court that the accused arrived at 1pm and left at about 1pm. PW16 testified further that the accused had approached and spoken to him at the SRK Nanga Assan polling station upon his arrival there. The time then was after 2.35pm. If PW16 met the accused after 2.35pm then he could not have left by about 1pm as stated by PW9. The incongruity in the

evidence of PW9 and PW16 on this matter only creates doubt as to the recollection of the two witnesses regarding the time. A

The next prosecution witness who could throw light on the matter of when the accused arrived at the polling station is PW14. He was the presiding officer at the SRK Nanga Assan polling station on 25 April 1995. He said that the accused came to see him at 1pm that day. However, he qualified his testimony by saying that it might have been the accused who had come to see him and that he did not know the accused then. He said that the accused brought along some cards which PW14 believed to be NRICs. The accused told him that these people should not be voting at that area. Under cross-examination PW14 said there was nothing significant for him to remember the time of 1pm. He did not agree that the accused arrived after 2pm. To my mind the testimony of this witness is neither here nor there as he seemed uncertain that it was the accused who had gone to see him. B C

As can be seen from the evidence of the various prosecution witnesses as set out above, the prosecution presented two conflicting versions of when the accused had arrived at and left the SRK Nanga Assan polling station on 25 April 1995. With regard to the version that the accused had arrived at about 1pm, the accuracy of the evidence of PW4 on the question of time is demonstrably unreliable. This was discussed earlier. The evidence of the other two prosecution witnesses, namely PW9 and PW14, was neither here nor there. PW9's testimony in particular, struck at the very case of the prosecution when he said nothing happened when the accused was at the polling station. Their evidence was so unreliable that it afforded no corroboration or support to the story of PW4 that the accused had arrived at the station at about 1pm. To my mind in view of the fact that the evidence led by the prosecution through PW4, PW9 and PW14 was not free from any reasonable doubt, the prosecution could not be said to have established beyond reasonable doubt this essential ingredient of the offence, that is to say, the accused was in the vicinity of the polling station at Nanga Assan at about 1pm on 25 April 1995. D E F

The other version of the events is that the accused had arrived at the polling station at 2pm or after 2pm. PW3 had testified to this. PW3 had steadfastly maintained that the accused had arrived at 2pm. He said this in examination-in-chief as well as under cross-examination. He had also said that the accused arrived after polling had closed. The testimony of PW3 was supported by PW5 who said he was with PW3 and the group at all times and if PW3 said that the accused had arrived past 2pm, then PW5 would agree. Apart from the testimony of PW5, there is support for the testimony of PW3 from the evidence of PW16. PW16 said that upon his arrival at the SRK Nanga Assan polling station he met and spoke with the accused and the time was after 2.35pm. Going by the description of the events by PW3 and PW4, starting from the time of arrival of the accused at the polling station to their departure with the accused on motor cycles, the whole episode could not have taken more than 30 minutes. Since the accused was still at the polling station after 2.35pm and the events as described by PW3 and PW4 could not have taken more than 30 minutes, in all probability the accused had arrived at 2pm as stated by PW3. That G H I

being the case, even if the accused had collected the NRICs of PW3, PW4 and PW5, it cannot be said that he had restrained them in order to refrain them from voting as polling time closed at 2pm that day.

In the event I am wrong in coming to the finding of fact that the accused had arrived at the polling station at 2pm that day, I will go on to consider whether the act of the accused in having taken away the NRICs of PW3, PW4 and PW5 was tantamount to restraining the latter to refrain them from voting.

We have the evidence of PW12 who testified that a voter can cast his vote even without an identity card. This is in view of the discretion of the presiding officer of the respective polling station to allow a voter to vote. There is support for this view in the decision of Abdul Hamid J in the case of *Tg Nawawi bin Tengku Ab Kadir lwn Lokman bin Muda & Lain-lain Lagi* [1996] 1 CLJ 551 at pp 563–564. His Lordship said:

> Kita tahu adalah menjadi amalan biasa bahawa seseorang yang hendak mengundi dikehendaki menunjukkan kad pengenalannya, sehingga kita menyangka bahawa tanpa menunjuk kad pengenalannya, seseorang itu tidak boleh mengundi. Sebenarnya kedudukan di sisi undang-undang bukan begitu. Kad pengenalan adalah merupakan satu dokumen, yang paling baik, untuk membuktikan bahawa orang yang datang hendak mengundi itu adalah orang yang sama dengan yang namanya tercatat dalam daftar pemilih. Undang-undang tidak mensyaratkan bahawa kad pengenalan mesti ditunjuk sebelum seseorang itu boleh diberi kertas undi. Undang-undang berkenaan terdapat dalam peraturan 20 Peraturan-Peraturan Pilihanraya (Penjalanan Pilihanraya) 1991:
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> > '20(1) Ketua tempat mengundi di sesuatu tempat mengundi boleh, menurut budi bicaranya, menghendaki seseorang pengundi, sebelum dia diberi suatu kertas undi, memberi apa-apa keterangan mengenai dirinya yang difikirkan perlu oleh ketua tempat mengundi dan membuat serta menandatangani akuan yang dinyatakan dalam Borang 11 Jadual Pertama dan tiap-tiap akuan itu adalah dikecualikan daripada cukai setem.'
>
> Mengikut peruntukan ini, terletaklah kepada budi bicara ketua tempat seseorang mengundi sama ada mahu menghendaki seseorang pengundi itu memberi apa-apa keterangan mengenai dirinya sebelum diberi kertas undi, atau tidak. Malah jika beliau berpuas hati dengan pengenalan pengundi itu beliau tidak perlu menghendaki apa-apa keterangan mengenai diri pengundi itu. Tetapi, mengikut amalan, seseorang pengundi itu dikehendaki menunjukkan kad pengenalannya sebagai keterangan mengenai dirinya. Jika pengundi itu tidak boleh menunjukkan kad pengenalannya dia dikehendaki membuat serta menandatangani akuan mengikut Borang 11 Jadual Pertama, Peraturan-Peraturan itu. Ini disebut oleh SR2 dalam keterangannya. Amalan ini adalah baik. Tetapi ketiadaan atau kegagalan menunjukkan kad pengenalan bukanlah satu sebab yang mengikut undang-undang, menghalang seseorang itu daripada mengundi asalkan namanya terdapat dalam daftar pemilih.

Reverting now to the testimonies of PW3, PW4 and PW5, all of them testified that upon his arrival, the accused had introduced himself and then collected their NRICs and red cards. PW3 denied that the accused had interviewed them. PW5 added that the accused had said nothing else to

them. To my mind the mere act of the accused in having asked for and taken the NRICs of PW3, PW4 and PW5 cannot amount to restraining the latter to refrain then from giving their votes. If there was any restraining, to my mind, it was not by the accused but by the local residents or long house folks as PW3 described them, who took strong objection to PW3, PW4, PW5 and their friends casting their votes at SRK Nanga Assan. It was the local residents/long house folks who had prevented PW3, PW4 and PW5 and friends from voting on the latter's first attempt to vote on the morning of 25 April 1995.

These people had even asked them to go back and put them in two long boats. The same people joined by some others were the ones who prevented them from voting on their second attempt in the afternoon. Similarly, it was the local residents who had asked PW3, PW4 and PW5 and their friends to remain at the compound of the teacher's quarters. It is significant that PW3 took the position under cross-examination that he and his friends were prevented from casting their votes that day because they were threatened by the longhouse folks. Similarly PW5 in his evidence-in-chief took the stand that he could not cast his vote that day because he was stopped by people and asked to go back.

The learned deputy public prosecutor submitted that PW3, PW4 and PW5 and their group were not able to cast their vote that day due to actions initiated by the accused. It was contended as well that the group of longhouse folks initiated 'stopping' PW3, PW4 and PW5 and their group from voting and that the accused had taken it on from 1pm. The thing to say is that there simply was no evidence that the accused had initiated the actions of the longhouse folks in preventing the complainants and their group from voting. The matter should be left at that. As for the accused having taken it on from 1pm, assuming for a moment that the accused had arrived at 1pm, his mere act of taking away the NRICs of the complainants and their group did not make the situation or predicament of the latter any worse. Under the law they could have voted with or without the NRIC anyway. The evidence led by the prosecution is that the accused had merely introduced himself to PW3, PW4 and PW5 and their group and had taken their NRICs. He did not say anything else. To my mind it cannot be said that in doing so the accused had restrained PW3, PW4 and PW5 in order to refrain them from voting. Neither can he be said to have taken it upon himself to continue the restraining of PW3, PW4 and PW5 in taking the NRICs of the latter.

In the circumstances I find that the prosecution has failed to prove each essential ingredient of the first, second and third charges beyond reasonable doubt. The accused is acquitted of the first, second and third charges and is hereby discharged without calling him to enter his defence. Exhibits P16 to P22 are to be returned to the prosecution.

Accused acquitted.

Reported by Pearl Wee